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UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/708,006	11/08/00	KISHIMOTO	197759US000N

022850 HM22/0424
OBLOM SPIVAK MCCLELLAND MAIER & NEUSTADT
FOURTH FLOOR
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EXAMINER

ART UNIT

PAPER NUMBER

1623
DATE MAILED:

04/24/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/708,006

Applicant(s)

KISHISHITA ET AL.

Examiner

Paul A. Zucker

Art Unit

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claims ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
- 1 ☒ Certified copies of the priority documents have been received.
- 2 ☐ Certified copies of the priority documents have been received in Application No. ____.
- 3 ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6
- 18) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other

DETAILED ACTION

Specification

1. Applicant has not complied with one or more conditions for receiving the benefit of an earlier filing date under 35 U.S.C. 120 as follows: An application in which the benefits of an earlier application are desired must contain a specific reference to the prior application(s) in the first sentence of the specification (37 CFR 1.78).

2. The disclosure is objected to because of the following informalities:

Page 10, line 11: Not comprehensible as written. Suggested: replace "in the number of revolution" with the word "rate".

Appropriate correction is required.

3. The disclosure is objected to because of the following informalities:

The Brief Description of the Drawings is not properly located.

The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to "Microfiche Appendix" and the drawings, each of the lettered items should appear in upper case, without underlining or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-References to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.
- (d) Reference to a "Microfiche Appendix" (see 37 CFR 1.96).
- (e) Background of the Invention.
 - 1. Field of the Invention.

2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
 - (f) Brief Summary of the Invention.
 - (g) Brief Description of the Several Views of the Drawing(s).
 - (h) Detailed Description of the Invention.
 - (i) Claim or Claims (commencing on a separate sheet).
 - (j) Abstract of the Disclosure (commencing on a separate sheet).
 - (k) Drawings.
 - (l) Sequence Listing (see 37 CFR 1.821-1.825).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The use of the phrase "at least" renders indefinite the characterization of the crystal by x-ray powder diffraction. It is uncertain whether at least applies to all the indicated numbers or only the first. Additionally it provides no upper limit to the range of measurement. The examiner notes that the first, third and fourth measurement values listed actually increase on going from the starting crystalline form (Claim 2) to the final form (Claim 1) while the value of the third measurement decreases.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Nofre et al (US Patent 5,480,668 02-1996). Nofre et al disclose the synthesis of N-[N-(3,3-dimethylbutyl)-L-.alpha.-aspartyl]-L-phenylalanine 1-methyl ester (hereinafter "Neotame") and its crystallization (column 7, line 47-51). The powder diffraction characteristics of the Neotame crystal, although not disclosed by Nofre et al, are an inherent property of the prior art crystal. Because Applicant distinguishes the instant crystal from the prior art crystal on the basis of its diffraction characteristics such characteristics must be clearly and unambiguously set forth.
- The use of Neotame as a constituent of food sweetening compositions is also claimed by Nofre et al. Thus the instant application is anticipated by Nofre et al.

Conclusion

6. Claims 1 through 13 are outstanding. All claims are rejected.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul A. Zucker whose telephone number is 703-306-0512. The examiner can normally be reached on Monday-Friday 9:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Geist can be reached on 703-308-1701. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556 for regular communications and 703-308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Paul A. Zucker
April 23, 2001



GARY GEIST
SUPERVISORY PATENT EXAMINER
TECH CENTER 1600